



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

MAR -6 2009

Steve Drown
Chief, Water Division
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118-5317

Dear Mr. Drown:

I am writing in regard to the Environmental Protection Agency's (EPA) concerns related to lack of use designations for Coffee Creek and Mossy Lake. I would like to explain EPA's position regarding these waters and the use provision for these waters currently found in Regulation No. 2: *Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas*. We believe that the Arkansas Department of Environmental Quality (ADEQ) has several viable options that will resolve these concerns.

EPA's primary concern is that the State has not designated uses for Coffee Creek and Mossy Lake. The standards regulation at 40 CFR §131.10(a) requires States to specify appropriate uses to be achieved and protected. Designated uses are a State's concise statements of its management objectives and expectations for each of the individual surface waters under its jurisdiction such as those identified in Reg. 2.302. The Arkansas standards do not specify designated use(s) for Coffee Creek or Mossy Lake, but contain a statement that "no fishable/swimmable or domestic water supply use" applies to these waters.

As you know, EPA responded to concerns by Representative John Cooksey regarding the water quality effects resulting from the Georgia-Pacific Crossett Mill discharge in these waters by funding the development of an assessment report entitled "Use Attainability Analysis and Water Quality Assessment for Coffee Creek, Mossy Lake and Ouachita River." Based on the data and information summarized in this 2007 use attainability analysis (UAA), EPA believes that the Gulf Coastal Ecoregion (GCER) designated use is attainable in these waters.

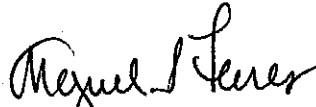
Consistent with sections 101(a)(2) and 303(c)(2)(A) of the CWA, EPA's regulations at 40 CFR Part 131 interpret and implement these provisions requiring that water quality standards must protect §101(a)(2) uses unless those uses have been shown to be unattainable, effectively creating a rebuttable presumption of attainability (see 40 CFR 131.10(j)). Unless the State rebuts this presumption, EPA must assume default §101(a)(2) uses apply. In this instance, given the results of the 2007 UAA, EPA assumes the GCER as well as primary contact uses apply to Coffee Creek and Mossy Lake below the Georgia-Pacific Crossett Mill discharge for all regulatory purposes.

It is Arkansas' responsibility to assure that the highest attainable uses are designated in its waters as described in 40 CFR 131.10(a). However, Arkansas has significant flexibility in meeting this requirement. The State could consider adopting a variance with specific regulatory milestones for the Georgia-Pacific Crossett Mill to allow time to modify its processes in order to meet the GCER and primary contact uses and associated criteria. If Arkansas does not believe these uses are attainable, the State has the option to demonstrate that through a UAA. Since EPA's 2007 UAA indicates that the GCER use can be met, another option may be the development of a UAA that shows site-specific or seasonal criteria are appropriate, or that a subcategory of the GCER use is supportable.

In instances where Arkansas has not adopted a designated use or has adopted uses that do not protect those specified in CWA §101(a)(2), it must re-examine those uses every three years to determine if new information has become available indicating that section 101(a)(2) uses for those waters are now attainable. If new information indicates that a section 101(a)(2) use is now attainable, the State must revise its standards accordingly. (See 40 CFR §131.20(a)). If Arkansas fails to adopt appropriate uses and criteria, or does not provide a UAA to serve as a basis that uses are not supported as soon as practicable, EPA must continue to assume that uses specified in §101(a)(2) of the Act are attainable and may recommend that the Administrator make a finding under CWA §303(c)(4)(B), which would result in promulgation of appropriate uses and criteria to protect those section 101(a)(2) uses.

We look forward to working with you to ensure appropriate protections for Coffee Creek and Mossy Lake and their unique watershed. If you would like to meet or discuss this matter further, please contact me or Russell Nelson at (214) 665-6646.

Sincerely yours,



Miguel I. Flores
Director

Water Quality Protection Division

cc: Teresa Marks, Director, ADEQ
Steve Drown, Chief, Water Division, ADEQ
Mo Shafii, Assistant Chief, Water Division, ADEQ
Harold Leggett, Ph.D., Asst. Secretary Office of Environmental Compliance, LDEQ